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Nothing contained herein shall be construed as the action of the American Bar Association unless the same shall have been first approved by the House of Delegates or the Board of Governors.

RESOLUTIONS ADOPTED BY THE COUNCIL OF ADMINISTRATIVE LAW WITH RESPECT TO THE HOOVER COMMISSION REPORTS ON LEGAL SERVICES AND PROCEDURE

At the annual meeting in Philadelphia, the Section authorized the Council to formulate and "to state the position of the Section with respect to the recommendations of the Hoover Commission on Legal Services and Procedure and of its Task Force on that subject on such occasions as may arise prior to the 1956 Annual Meeting." (See *infra*, 8 Ad. L. Bul., p. 12.) The Special Committee of the Association on Legal Services and Procedure is required to report to the House of Delegates at the 1956 mid-winter meeting in Chicago in February. If the Section position was to be taken into account, it had to be formulated in time to permit consideration by the Special Committee as well as for presentation to the House of Delegates at the mid-winter meeting. Because of the magnitude and the complexity of the problems presented for determination, the Chairman, on August 27, appointed a special committee of the Council, composed of John Cragun (chairman), Robert Benjamin and Blythe Stason, to prepare a procedure for Council deliberation and action. On September 28, John Cragun circulated to the Council a memorandum, "Questions for Consideration by the Council", prepared by Robert Benjamin. On October 7, he circulated to the Council a supplemental memorandum, "Hoover Commission Homework", containing a memorandum of general principles prepared by Blythe Stason and a list of the questions deemed by Robert Benjamin to be the most important among the many on his first list.

The Council met in Washington on October 29 and 30. All chairmen and vice-

chairmen of Section committees were invited to, and many did, attend the two-day Council meeting.

The Council carefully considered the procedure and approach which should be used in taking Council action. As reflected by its resolutions, the Council decided that it could do no more than formulate general principles and that in the limited time at its disposal it could not pass upon or adequately consider the specific details of the Administrative Code. Similarly it was of the view that the position of the Association should be stated in the form of general principles with authority delegated to the Section or some other group to implement such principles by the preparation of appropriate legislation.

The Council intentionally omitted specific reference in its resolutions to any recommendations of the Hoover Commission or of its Task Force or to the provisions in the proposed Administrative Code. The text of the Council resolutions follows:

1. RESOLVED, That the Section of Administrative Law recommends action by the American Bar Association, taking cognizance of the recently completed reports of the Hoover Commission and its Task Force on Legal Services and Procedure, and

   (1) Favoring a re-examination at this time of the Administrative Procedure Act of 1946;

   (2) Sponsoring the preparation of a comprehensive Administrative Code, including needed reforms and covering all aspects of administrative services and procedures; and

   (3) Authorizing and directing the Administrative Law Section, or some other Association agency, to draft and submit to the Association appropriate legislation in accordance with the principles hereinafter set forth.

RESOLVED, That the American Bar Association supports:

[I]* 2. *Increasing the extent to which information is made available to the public in regard to the administrative process,* including

   (a) Broadening the requirements concerning publication of rules, statements of policy, interpretations and instructions, but providing appropriate means for authorizing short form or alternative methods where desirable.

   (b) Broadening the requirements concerning the publishing of orders, or in the alternative making them available for public inspection.

   (c) Developing the Code of Federal Regulations in order that it may be made much more useful for public informational purposes.

[II] 3. *Increasing participation in administrative rule-making where formal procedures are not required by facilitating access to proceedings for interested persons,* including

   (a) Broadening the coverage of provisions for notice and opportunity for public participation by eliminating in appropriate instances exemptions now included in Section 4 of the Administrative Procedure Act, so far as it may be done with-

* Arabic numbers have been substituted for the Roman numerals contained in brackets.

out occasioning delay or expense disproportionate to the public interest.

(b) Narrowing the authority to issue emergency rules without notice and public participation by limiting the effectiveness of such rules to 120 days.

(c) Improving the position of the petitioner for the issuance of a rule by requiring a written response by the agency stating reasons and making the same available to public inspection.

[III] 4. *Improving the procedures followed in administrative hearings by adopting all practicable measures to make the hearings as fair and adequate as possible,* including

(a) Enlarging the applicability of the principle of separation of functions now established by the courts and by Section 5(c) of the Administrative Procedure Act, by including formal rule-making situations.

(b) Enlarging the applicability of the principle of separation of functions now established by the courts and by Section 5(c) of the Administrative Procedure Act by extending it to cover agency members.

(c) Taking the ultimate step in separation of functions by creating a separate administrative court of the United States, or other specialized legislative courts, having original jurisdiction to ensure the judicial tradition of independence and fairness in areas of adjudicatory action equivalent to ordinary judicial action, such as unfair trade, unfair labor, and tax cases.

(d) Enlarging the applicability of the formal hearing procedures by extending such procedures to all rule-making hereafter required to be made "after a hearing" and not exempted by legislative provision indicating an intention to prescribe merely a legislative type of hearing, and provided that an examination should also be made of previously enacted legislation to determine the appropriate applicability of formal hearing procedures.

[IV] 5. *Improving the quality of the administrative hearing by upgrading the status and stature of Hearing Commissioners at the trial level,* including

(a) Affording the Hearing Commissioners independence from the agencies by placing them under a Chief Hearing Commissioner, attached to the administrative court, if such a court is created, otherwise to a properly constituted independent Office of Administrative Procedure, and giving that Office, subject to an Advisory Committee, power to make appointments of Hearing Commissioners, to handle assignments, and to initiate removal proceedings.

(b) Increasing the control of the Hearing Commissioner over the proceedings, for example, by authorizing definitive pre-trial procedures to simplify proceedings and by prohibiting indiscriminate interlocutory appeals.

(c) Providing for Hearing Commissioners to make initial decisions in all formal proceedings presided over by them.

(d) Limiting agency review of Hearing Commissioner decisions so as to provide that the scope of review by the agency, except for questions of policy and agency discretion committed to the determination of the agency by the Congress, shall be the same as that of the Court upon review of the decision of the agency.

[V] 6. *Improving the administrative process in formal cases by invoking appropriate practices of the Federal judicial process,* including

(a) Requiring that, in adjudication, the rules of evidence and the requirements of proof shall conform to the extent practicable with those in civil non-jury cases in the United States District Courts.

(b) Prescribing standards of review of agency decisions on fact issues in formal proceedings equivalent to review of Federal trial court decisions by the United States Courts of Appeals.

[VI] 7. *Bringing, so far as practicable, agency discretionary powers within the range of suitable controls, either administrative or judicial, thus attempting to minimize the dangers of absolute authority.*

[VII] 8. *Invoking and enforcing proper standards of admission of and conduct applicable to attorneys and other representatives appearing in agency proceedings,* including

(a) Prescribing general standards of admission of and of conduct applicable to representatives of clients before administrative agencies.

(b) Setting up authority and procedure to enforce the prescribed standards.

Comments: These resolutions have been submitted to the Special Committee of the Association on Legal Services and Procedure. When that committee reports the resolutions it proposes to present to the House of Delegates, the Council may wish to re-examine the resolutions to effect any desirable changes. Such Council resolutions, under normal procedure, will be presented to the House at its mid-winter meeting in February.

"If a man does not keep pace with his companions, perhaps it is because he hears a different drummer. Let him step to the music he hears."—Henry David Thoreau.

CHAIRMAN'S PAGE

Recommendations of Hoover Commission and Its Task Force re Legal Services and Procedure

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You will find elsewhere in this issue the text of the resolutions adopted by the Council with respect to the Hoover Commission and its Task Force on Legal Services and Procedure. In the first resolution the Section recommends action by the ABA favoring re-examination of the Administrative Procedure Act of 1946 and sponsoring the preparation of a comprehensive Administrative Code which would include needed reforms. This resolution further recommends that authority to draft

the appropriate legislation be given the Section of Administrative Law or some other Association agency. Like the principles recommended in the Council resolutions, legislation to put them into effect would cover virtually the entire field of interest of the Section. This suggests that if the Association decides to support the recommended program, the Section may be given a major assignment in the preparation of implementing legislation. If this were done, the Section would not lack for talent or know-how to do the job. Moreover, such assignment to the Section would not be without precedent. The Administrative Procedure Act of 1946 was drafted by the Special Committee on Administrative Law, the predecessor organization in the Association to the Section of Administrative Law.

Committee to Study Impact of Atomic Attack

At the Annual Meeting in Philadelphia the House of Delegates, on the recommendation of the Section of Administrative Law, adopted a resolution recommending that the Board of Governors establish a special committee to study the legal and administrative problems which might be expected to arise from atomic attack. At the request of the Secretary of the Association, the Chairman of the Section presented this matter to the Board of Governors at its October meeting in Chicago. The Board acted favorably upon the resolution and established a Committee of five members and designated it as "Special Committee on Impact of Atomic Attack on Legal and Administrative Processes." As we go to press, the President was about to appoint the members of the Committee. It is worthy of mention that the resolution giving rise to this Committee had its origin in the Section Committee on Emergency Agencies, ably chaired by Hans Klagsbrunn.

Reorganization of Section Committees

Mindful of the steadily increasing workload of the Section of Administrative Law, the Council at the last Annual Meeting in Philadelphia approved the establishment of several new Committees and a realignment of Committee structure more in keeping with the organization of the Executive Branch of the Government.

Thus, the work of the Committee on Agriculture, Food and Drugs and Related Subjects was divided into two new Committees: the Committee on Agriculture and the Committee on Food and Drugs. The work of the Committee on Advertising, Trade and Securities Regulation was divided into two new Committees: the Committee on Securities and the Committee on Trade Regulation. The work of the Committee on Communications was divided into two new Committees: the Committee on Communications and the Committee on Postal Matters. The work of the Committee on Transportation was divided into three new Committees: the Committee on Aviation, the Committee on Interstate Commerce Act and the Committee on Maritime Transportation. New Committees were also created on Indian Claims, Mobilization, the State Department, and the

Treasury Department. See "Organization —1955-6," *infra* pp. 34-35.

In accordance with the Section's field of interest, the new Committees will concern themselves with the adjudicatory and rule making functions and other procedural and operational aspects of administrative law with respect to those agencies of the Government or laws which the names of the new Committees suggest.

Regional Meetings

Measured by attendance, it may be said that no program of the Section has had more audience appeal or interest to the lawyer than the program demonstrating the work of the Boards of Contract Appeals. The demonstration, staged by a panel of five Washington, D. C., lawyers, begins with an original dispute between a contractor and a contracting officer of the government, then processes an appeal of the contractor through a Board of Contract Appeals, and ends with the judicial review of the Board's decision. Because of the large attendance at the demonstration at the annual meeting in Philadelphia, it was decided to "put the show on the road" by repeating it at each of the regional meetings of the Association this year. This has already been done at the Northwestern Regional Meeting at St. Paul, Minnesota, and at the Deep South Regional Meeting at New Orleans, Louisiana. It is also scheduled to be given at the Northeast Regional Meeting at Hartford, Connecticut, next April.

While the demonstration as a production is not expected to rival "Guys and Dolls", it has great interest for the lawyer who represents contractors that have procurement and construction contracts with the government. Contractors who are dissatisfied with decisions of contracting officers or their findings of fact are afforded an opportunity to appeal to a Board of Contract Appeals. Because of the great volume of outstanding contracts and the large number of disputes and controversies which arise between the contractor and the contracting officers, the administrative practice before these Boards although new is already substantial and is expected to continue to grow.

Franklin Stone, General Counsel, Civil Aeronautics Authority, also gave an informative address at the Northwestern Regional Meeting, on some of the problems of the Civil Aeronautics Board. At the Deep South Regional Meeting, Robert Benjamin ably discussed the problems of administrative law encountered by the general practitioner.

Rufus G. Poole
Chairman

RESOLUTIONS ADOPTED BY SECTION AT PHILADELPHIA

At its annual meeting in Philadelphia in August, the Section adopted resolutions on the following subjects. The comment section under each subject-matter entry states, where applicable, the Association status of the resolution and its relevancy to pending legislation.

1. *Organization and By-Laws.* The Section adopted the three resolutions recommended by the Committee on Organization and By-Laws, as set forth at 7 Ad. L. Bul. 245-246, amending sections 2, 4 and 5 of Article III, primarily to provide for twelve elected members-at-large of the Council serving for three-year terms instead of eight members serving for four-year terms.

Comment: Approved by the House of Delegates at its annual meeting in August.

2. *Establishment of a special committee in the Association on the Impact of Atomic Attack,* proposed by the Committee on Emergency Agencies (see 7 Ad. L. Bul. 221-223). The Section adopted a resolution recommending that the House of Delegates adopt the following resolution:

> Resolved, That it is the opinion of the American Bar Association that the difficult and novel legal and administrative problems arising out of the possibility of atomic attack within our borders merit the careful and thoughtful consideration of the Bar of the country; and
>
> Further Resolved, That the Board of Governors be requested to consider the proposal of the Section of Administrative Law for the establishment of a Special Committee of the Association on the Impact of Atomic Attack on Legal and Administrative Processes, and be authorized in its discretion to establish such a committee.

Comment: Adopted by the House at the Philadelphia annual meeting in a slightly revised form, enlarging the reason for establishment of such a committee to include "or other national calamity" and leaving the title of such committee to be determined by the Board of Governors. At its October meeting in Chicago, the Board approved the establishment of a "Special Committee on the Impact of Atomic Attack on Legal and Administrative Processes", with five members to be appointed by the President. See The Chairman's Page, *supra* p. 5.

3. *Immigration and Nationality,* resolutions proposed by the Committee on Immigration and Naturalization (see 7 Ad. L. Bul. 236-239). The Section adopted resolutions recommending that the House of Delegates adopt the following four resolutions:

(1) Be It Resolved, That it is the opinion of the American Bar Association that there be established a Board of Visa Appeals with power to review the denial by a consul of a visa and that the Section of Administrative Law be authorized and directed to advance appropriate legislation to that end.

(2) Be It Resolved, That it is the opinion of the American Bar Association that an alien should not be excluded except upon record evidence taken at a hearing ~~but~~ [provided, however,] that proper provision be made in security cases for safeguarding [the confidential information and] the sources of confidential information relied on and that the Section of Administrative Law be authorized and directed to advance appropriate legislation to that end.

(3) Be It Resolved, That it is the opinion of the American Bar Association that in all alien matters in which an administrative hearing is required to be had by statute or the Constitution, the hearing officer be duly appointed under Section 11 of the Administrative Procedure Act and be governed by all the relevant provisions of Sections 5, 7 and 8 of that Act.

(4) Be It Resolved, That it is the opinion of the American Bar Association that any person whether within or without the United States who claims to be a national shall be entitled to a judicial determination of his claim, and where a court finds that the action is instituted in good faith and has a substantial basis, he shall be entitled to a certificate of identity to enable him to appear in person in such proceeding, and that the Section of Administrative Law be authorized and directed to advance appropriate legislation to that end.

Comment: Because of the need for immediate action in relation to pending legislation, these resolutions were submitted to and adopted by the Board of Governors at its meeting in Chicago on October 22 as the action of the American Bar Association. The Board modified the second resolution by omitting the stricken word and adding the words within brackets. See also, the Report of the National Committee, 8 Ad. L. Bul. at pp. 27-28.

4. *Indian Claims Commission Matters.* The Section adopted a resolution recommending that the House of Delegates adopt the following three-part resolution:

> Be It Resolved, That in the opinion of the American Bar Association H.R. 5566, in providing that proceedings before the Indian Claims Commission may be heard and decided by attorneys employed by the Commission pursuant thereto, is violative of the principles and provisions of the Administrative Procedure Act; and
>
> Further Resolved, That in the opinion of the American Bar Association the determination of Indian claims should be by the Indian Claims Commission through qualified examiners only, or, in the alternative, the determination of such claims should be transferred from the Indian Claims Commission to the Court of Claims; and
>
> Further Resolved, That in the opinion of the American Bar Association the time within which Indian tribes are entitled to present such claims should be reopened for a period of one year from the effective date of such legislation.

Comment: It was the view of John Cragun that this resolution as worded did not correctly reflect the views of the Section. He prepared an alternative draft for consideration by the Board of Governors. The Council on being polled expressed a preference for the Cragun draft. On October 22, the Section Chairman presented both the Section resolution and the Cragun redraft to the Board. The Board adopted the Cragun version which reads:

> (1) Resolved, That in the view of the American Bar Association H.R. 5566, 84th Cong., as amended to exempt the conduct of certain hearings before the Indian Claims Commission from the requirements of the Administrative Procedure Act, would prejudice the opportunity for a fair hearing and determination of proceedings before that agency; and the American Bar Association opposes the bill to the extent any exemption from the Administrative Procedure Act is contained therein.
>
> (2) Resolved, That in the opinion of the American Bar Association the judicial functions of the Indian Claims Commission respecting claims against the United States by Indian tribes should be transferred from that Commission to the Court of Claims upon the expiration of the present life of the Commission in 1957, rather than continuing further the life of an administrative agency as to functions normally and historically carried on by the courts.
>
> (3) Resolved, That the American Bar Association hereby reaffirms its view that the time within which Indian tribes are entitled to present claims should be reopened for a period not less than one year from the effective date of the legislation providing therefor.

See the Report of the National Committee, 8 Ad. L. Bul. at p. 25.

5. *Postal Matters.* On the basis of a Council recommendation, the Section adopted a resolution recommending that the Association adopt the following resolution:

> Resolved, That the Section of Administrative Law is of the view that S. 2516, 84th Congress, which would authorize the Postmaster General to impound mail in certain cases, does not fully conform with essential procedures specified in the resolution of the American Bar Association approved August 23, 1954, and therefore should be opposed for the reasons:

(1) that the authority of the Postmaster General to impound mail is not expressly related to the commencement of an administrative proceeding before him by which the party may have an opportunity for a hearing and final determination of the case on the merits; and (2) that the administrative impounding of mail for the initial ten-day period is continued in force by the mere filing of a petition for an order of a court, and is otherwise lacking in procedural safeguards; and

FURTHER RESOLVED, That the Section of Administrative Law on consideration of the said American Bar Association resolution, the provisions of pending bills, S. 8, S. 2516, and H.R. 174, 84th Congress, and the reports of Section committees on conferences pertaining to reasonable procedures for effectively dealing with the impounding of mail on grounds of obscenity, is of the opinion that a provision for an interim impounding by the Postmaster General in such cases, upon notice to the person involved, is not unreasonable or inconsistent with the Association's intention of assuring to such person an opportunity to contest the lawfulness and reasonableness of any such peremptory impounding of mail, provided (1) that such interim order shall expire at the end of the ten-day period and may be vacated or modified within such period by order of court; (2) that provision be made for examination of mail by the addressee under postal supervision and the receipt of such mail which can be identified as not within the scope of such proceeding, and (3) that the continued impounding of mail after the initial ten-day period shall be only by order of a court after opportunity for hearing and upon a determination as provided for in S. 2516; and

FURTHER RESOLVED, That the officers of the Section be and they are hereby authorized to report this action and seek approval of the Association in such manner as they may deem appropriate, provided, that the Council be and is hereby authorized in its discretion, after further consideration, to amend clauses (1) and (3) of the second paragraph of the foregoing resolution to provide for a specified period, not exceeding twenty days, in lieu of the ten-day period therein stated.

Comment: Approved by the Board of Governors on October 22. See the Report of the National Committee, 8 Ad. L. Bul. at pp. 28-29.

6. *Legislation authorizing federal agencies to impose money penalties.* On the basis of resolutions of the Communications Committee opposing specific pending legislation, the Section adopted a resolution recommending that the House of Delegates adopt the following resolution:

WHEREAS, it is the view of the American Bar Association that legislation authorizing Federal agencies to impose money penalties for alleged violation of law or regulations should not be authorized as a regulatory device except upon a most convincing justification and subject to fair procedural safeguards, including (1) a clear statutory specification of the offense subject to the money penalty sanction, (2) provision for adequate and fair procedures, including notice to the accused and opportunity to answer prior to imposition of the penalty, and (3) other safeguards to avoid an agency prejudgment of guilt and the imposition of double penalties for the same offense and to afford opportunity for a fair hearing.

BE IT RESOLVED, That in the opinion of the American Bar Association S. 1549 and H.R. 5613 and S. 1649 are deficient in the above stated particulars and their enactment is therefore opposed and the Administrative Law Section is authorized and directed to represent the Association in furtherance of the above stated views.

In addition, the Section adopted a resolution granting specific authority to the Council concerning the above resolution, which reads as follows:

FURTHER RESOLVED, That the Council of the Section be authorized to consider any redrafts of S. 1549 and H.R. 5613 and S. 1649, as may be produced by the sponsors of those bills, and if in the opinion of the Council the above resolutions should be reconsidered in the light of the redrafts and a report of the Committee on Communications thereon, the Council is authorized to postpone presentation of the foregoing resolution and to propose instead an appropriate resolution with respect to the bills as redrafted.

Comment: An appropriate resolution will be presented to the House of Delegates at its 1956 Mid-Winter Meeting. See the Report of the National Committee, 8 Ad. L. Bul. at p. 27.

7. *Subpoena power to Boards of Contract Appeals.* As proposed by the Committee on Public Contracts, the Section adopted a resolution recommending that the House of Delegates adopt the following resolution:

BE IT RESOLVED, That it is the opinion of the American Bar Association that administrative agencies having the power to decide disputes arising under Government contracts pursuant to the provisions of a Disputes-Appeals Clause contained in such contracts should have the power to subpoena witnesses and to administer oaths or take affirmations in lieu thereof in connection with hearings on or consideration of such disputes; and that the Section of Administrative Law be authorized and directed to advance appropriate legislation to that end.

Comment: The Chair ruled before the vote that adoption of the resolution would not carry with it approval of the proposed Bill attached as Appendix B to the committee report. See 7 Ad. L. Bul. 253-5. The resolution will be submitted to the House of Delegates at its 1956 mid-winter meeting.

8. *Agriculture Committee Matters: S. 930.* As recommended by the Council, the Section adopted the following resolution:

RESOLVED, That the Council having received assurances from the General Counsel of the National Milk Producers Federation that S. 930, 84th Cong., is being redrafted and it appearing that S. 930 as so redrafted will be considered further by the Committee on Agriculture, Food, Drugs, and Related Subjects in its revised form, and the Section having authority under previous resolution of the House of Delegates to preserve the gains made by the adoption of the Administrative Procedure Act, it is recommended by the Council to the Section that this matter be deferred until further report by the Committee on Agriculture, Food, Drugs, and Related Subjects.

Comment: See the Report of the National Committee, 8 Ad. L. Bul. at p. 26.

9. *President's Conference on Administrative Procedure.* As proposed by the Committee on Improvement of Administrative Procedure (7 Ad. L. Bul. 240-241) and approved by the Council, the Section authorized the Council to present its recommendations to the House of Delegates at such time as the Council deems appropriate, in view of the establishment by the Association of a Special Committee to study the recommendations and reports of the Hoover Commission, its Task Force and the President's Conference. Subject to this understanding, the Section adopted a resolution recommending that the House of Delegates adopt the following resolutions:

(1) BE IT RESOLVED, That the American Bar Association advocates the prompt establishment of an Office of Administrative Procedure, or of Legal Services and Procedure, in the Federal Government independently of any government department. Without prejudice to the possible desirability of the performance of additional functions by an Office of this nature, as recommended by the Commission on Organization of the Executive Branch of the Government and by unofficial groups, the Association believes the Office should have the duties stated in paragraph (a) of Recommendation A-1 of

the President's Conference on Administrative Procedure. If there are any budgetary or other reasons which would prevent early establishment of an independent office of Administrative Procedure, the Association would not oppose the immediate establishment of the office in the Department of Justice with an express proviso that the office is made part of the Department as an interim measure only, until it becomes possible to establish an independent office, *and an additional proviso that the Director of such office, if established in the Department of Justice, be requested to report directly to the Attorney General.*

(2) Be It Resolved, That the American Bar Association, despite its expressed belief that hearing officer personnel functions should not be performed by the Civil Service Commission as recommended by the President's Conference on Administrative Procedure, expresses its gratification over the completion of the work of the Conference, which was called partly at the instance of the Association, and over the collaboration through the Conference of agency representatives, trial examiners, and members of the bench and bar, which has produced significant proposals for the further improvement of federal administrative procedures.

(3) Be It Resolved, That the American Bar Association endorses the following procedural recommendations, made by the President's Conference on Administrative Procedure to the agencies: E-1, generally recommending the elimination of unnecessary delay, expense and volume of records; E-7-9, relating to prehearing and other conferences and to definition of issues; E-10 and E-11, relating to the submission of documentary evidence in advance and the identification and distribution of copies of excerpts from documents; E-12, relating to the limitation of expert or opinion testimony; E-14, relating to authority in hearing officers to rule upon interlocutory matters which arise during the course of hearings, with interlocutory appeals reduced to a minimum. The Section also welcomes Recommendations E-20-22, which suggest agency action to furnish practice manuals to counsel, to cooperate in institutes or courses in specialized fields of administrative law, and to sponsor conferences with members of the bar.

(4) Be It Resolved, That the American Bar Association endorses Recommendation A-2 of the President's Conference on Administrative Procedure, urging the adoption of legislation to authorize the filing of abbreviated records with the United States Courts of Appeals in proceedings to review agency orders. The Section also endorses Recommendation B-2 of the Conference urging the several United States Courts of Appeals to adopt a uniform rule permitting the filing of abbreviated records in such proceedings where existing statutes permit, together with Recommendation B-3 which urges the several United States Courts of Appeals to adopt a uniform rule, applicable to review of agency orders, providing for the filing of briefs prior to the printing of a jointly printed appendix.

(5) Be It Resolved, That the American Bar Association endorses Recommendations C-7, D-1 and E-16 of the President's Conference on Administrative Procedure, relating to improvement and economy in the methods of reporting, recording, monitoring and transcribing the records of administrative hearings and the development of a general policy to assure prompt availability of transcripts to interested persons at a fair cost; but the Section recommends in addition that provision be made to furnish a transcript without charge to any party directly affected by any agency proceeding who establishes that he is unable to pay therefor without undue hardship, with the agency paying the cost thereof out of money appropriated for that purpose where the transcript is being prepared by contract reporting.

(6) Be It Resolved, That the American Bar Association endorses Recommendation E-17 of

the President's Conference on Administrative Procedure, seeking uniformity in the printing and identification of agency rules through adoption in all official publications and citations of the title and subdivision designations appearing in the Code of Federal Regulations.

10. *Recommendations of the Hoover Commission and of its Task Force on Legal Services and Procedure.* At the Section meeting at Philadelphia in August, a wide range of the broad subject matter covered by the Recommendations was discussed including the proposals for an Administrative Court, enlarging the authority of Hearing Commissioners, increasing formal procedures and public participation in rule-making, and the specific proposals relating to the separation of functions, evidence and judicial review.

From the general discussion and the lack of unanimity among the speakers, it became apparent that the Section could not adopt any position on the Recommendations of the Hoover Commission and its Task Force before the close of the Section meeting. As the Special Committee of the Association on Legal Services and Procedure was to report its recommendations to the House of Delegates at the 1956 mid-winter meeting, the Section felt obligated to formulate the views of the Section before that time. Accordingly, the following resolution was proposed and, after some discussion, adopted by the Section:

> Resolved, That the Council of the Section of Administrative Law be authorized to state the position of the Section with respect to the recommendations of the Hoover Commission on Legal Services and Procedure and of its Task Force on that subject on such occasions as may arise prior to the 1956 annual meeting.

Comment: The tentative action of the Council pursuant to this authorization is set forth elsewhere in this issue. See also the Chairman's Page, *supra* p. 4.

REPORT OF THE SECTION CHAIRMAN TO THE 1955 ANNUAL MEETING

This has been an unusual year in the activity of Section committees, culminating in intensive study of the Report of the Hoover Commission on Legal Services and Procedure, the Report of its Task Force on that subject, and related recommendations of the Final Report of the President's Conference on Administrative Procedure. These reports will be the subject of extended consideration at the 1955 Annual Meeting, first in sessions of the Council on Saturday, August 20, and Sunday, August 21, which the general membership of the Section has been invited to attend, and again in the Section meeting of Tuesday, August 23, starting with a breakfast to be held jointly with the Federal Bar Association at which we are to be addressed by Honorable Clarence A. Davis, Under Secretary of the Interior and First Vice-President of the Federal Bar Association, and Dean E. Blythe Stason, a member of the Hoover Commission Task Force on Legal Services and Procedure and a member of our Section Council.

The discussion, both in the Council sessions and in the general Section meeting, will be led by the officers of Section committees. Since the range of subjects is broad, organization of the discussion has been essential. That task has been ably performed by Ralph F. Fuchs, Chairman of the Committee on Improvement of Administrative Procedures, and Robert K.

McConnaughey, Chairman of the Committee on the Administrative Procedure Act.

Prompt Section consideration of these matters would be of first importance in any event. It is of especial importance because of the setting up by the Association of a Special Committee on Legal Services and Procedure, whose duty it will be to report to the House of Delegates, taking account of the views of sections and committees of the Association and other interested organizations including agencies of the Federal Government. Since the matters under consideration have been for years the subject of our particular interest and attention, we believe that our Section can make a most valuable contribution to the formulation of the Association's final views.

It will not be known until the House of Delegates has acted at the 1955 Annual Meeting when the Special Committee will be expected to make a final report to the House. It is at least possible that that will be called for at the 1956 Midyear Meeting. In view of this possibility, it may be that the Section will want to authorize the Council to speak for the Section on aspects of these subjects on which the forthcoming meeting may not be able to come to final conclusions.

Section activity during the current year has been concerned with many other matters as well. Some of these had been acted on by the Section at the 1954 Annual Meeting or earlier. Other action was taken by the Council pursuant to the amendment of Article VI, Section 1, of the By-laws adopted by the Section at the 1954 Annual Meeting and approved by the House of Delegates at the 1955 Midyear Meeting, providing that:

> "During the interval between meetings of the Section, the Council shall have full authority to act for the Section in any way in which the Section itself would be authorized to act, and any such action taken by the Council pursuant to this provision shall be reported to the members of the Section at the next annual meeting of the Section."

I report herewith, in behalf of the Council, on matters in both categories.

Administrative Agency Fees and Charges

At the 1954 Annual Meeting the Section authorized the Council to report on this subject to the 1955 Midyear Meeting of the House of Delegates on consideration of the results of further study by the Section Committee on Agency Fees and Charges.

The March 1955 issue of the Administrative Law Bulletin (7 Ad. L. Bul. 45-7) sets forth the resolution proposed by the Section and adopted by the House of Delegates, urging among other things repeal of Title V, entitled "Fees and Charges", of the Independent Offices Appropriation Act, 1952, and sets forth also the "Statement of Reasons for Recommendation" from the report of the Section to the House.

Following adoption by the House of this resolution, which authorized the Section to take appropriate action in behalf of the Association to make its views effective, the Section has been active to that end, especially through Donald C. Beelar, the able

and resourceful Chairman of its National Committee. In May Mr. Beelar, accompanied by the Section Chairman, appeared in support of the resolution before Senator Magnuson's Subcommittee on Independent Offices Appropriations of the Senate Committee on Appropriations. Mr. Beelar's written statement to the Subcommittee, which was supplemented by oral testimony, is printed in the June issue of the Bulletin (7 Ad. L. Bul. 115-20). The Committee on Appropriations reported (S. Rept. No. 411, 84th Cong., 1st Sess., page 11), as we had been informed it would, that any change in the policy of Title V of the 1952 Act should be made by the appropriate legislative committee of the Senate. We had had in mind, in appearing before Senator Magnuson's Subcommittee, that he is also Chairman of the Senate Committee on Interstate and Foreign Commerce, the committee having jurisdiction over many of the agencies affected. On July 27 Senator Magnuson, as Chairman of the Committee on Interstate and Foreign Commerce, submitted for himself and Senator Bricker, S. Res. 140, to the effect that the Committee on Government Operations be authorized and directed to conduct a full and complete study and investigation of the subject and to report not later than January 31, 1957, and that the agencies be requested, pending such report, not to issue any regulations imposing fees and charges under Title V of the 1952 Act and to suspend the application of any theretofore issued.

S. Res. 140 refers in one of its "Whereas" clauses to the American Bar Association's having recommended the repeal of Title V of the Independent Offices Appropriation Act of 1952 and a review of the necessity and desirability of the establishment of fees and charges by Federal agencies as authorized by that title. Senator Magnuson's statement in submitting the resolution (Congressional Record, July 27, pages 10024-25) refers also to the Association's views, as follows:

> "Recently, the American Bar Association through its section of administrative law appeared before the Subcommittee on Appropriations and urged that title 5 of the Independent Offices Appropriation Act of 1952, as it applied to fees and charges, be repealed, and in the meantime, that a resolution be adopted which would suspend any agencies action that was planned or undertaken under title 5 until Congress had an opportunity to examine the entire problem of fees and charges. The bar association's testimony is set out in detail in the appropriations hearings."

S. Res. 140 was referred to the Committee on Government Operations, reported on July 28 with a minor amendment, and referred on July 30 to the Committee on Rules and Administration. In the last days of the session it was not called up on the consent calendar, but was put over until the beginning of the next session. While there may be some disagreement at that time, the expectation is that the agencies will take no new action to implement Title V of the 1952 Act until S. Res. 140 is acted on.

This is a matter calling for the continued activity of the Section.

Impounding of Mail by the Postmaster General

On the Chairman's Page of the December 1954 issue of the Bulletin (7 Ad. L. Bul. 33-4) I discussed the resolution adopted by the House of Delegates at the 1954 Annual Meeting opposing the provisions of H.R. 569, 83d Cong., which would have authorized the Postmaster General, upon the institution of obscenity, lottery or fraud proceedings before him, if it should appear to him "to be reasonably necessary for the protection of the public or to be in the public interest, * * * [to] order that mail addressed to such person * * * be impounded and detained by the postmaster at the office of delivery pending final decision of the issues involved in said proceedings." The Association resolution opposed the impounding of mail without prior resort by the Postmaster General to a United States District Court on notice to the person affected. After the adoption of this resolution the President of the Association delegated to our Section (which, jointly with the Section of Criminal Law, had proposed the resolution to the House of Delegates) representation of the Association in this matter; and the Section, again primarily through the Chairman of its National Committee, has urged the Association's views on the appropriate committees of the Congress.

In the early days of the 84th Congress Senator Carlson, who had been Chairman of the Senate Committee on Post Office and Civil Service in the 83d Congress, introduced a bill, S. 8, which proceeds generally along the lines advocated by the Association resolution. In the House of Representatives Congressman Rees of Kansas, who had been Chairman of the House Committee on Post Office and Civil Service in the 83d Congress, introduced H.R. 174, in the same terms as H.R. 569, 83d Cong. In July Senator Kefauver, for himself, Senator Hennings, Senator Langer and Senator Wiley, introduced S. 2516, whose provisions lie somewhere between those of S. 8 and H.R. 174.

No hearing on any of these bills was held during the first session of the 84th Congress, nor was any of them reported out. Representatives of the Section (Donald C. Beelar, Chairman of the National Committee, William I. Denning, Vice-Chairman for Post Office affairs of the Committee on Communications, John W. Cragun, Last Retiring Chairman, and the Section Chairman) did, however, hold extended conferences with the Chairman and former Chairman of the House Committee on Post Office and Civil Service, members of that committee's staff, and representatives of the office of the Solicitor of the Post Office Department, in an attempt to work out a mutually satisfactory solution. These conferences produced a tentative draft of a bill which, if developed in some respects, I should have been willing to present to the Section, and through it to the Association, as meeting the substance of the Association's objections to H.R. 569, 83d Cong. (H.R. 174, 84th Cong.).

When the first session of the 84th Congress adjourned the House Committee and the Post Office Department had not yet decided whether they would approve sub-

stitution of such a bill for H.R. 174. In anticipation, however, of further consideration during the second session of the 84th Congress, it appears to me worth while to state the substance of what the compromise bill would have provided. It would authorize the Postmaster General, not later than ten days after the institution of an obscenity, fraud or lottery proceeding before him, to issue an interim impounding order, on notice to the person affected, provided the Postmaster General files concurrently in a United States District Court an application for the issuance by such court of a temporary restraining order continuing the impounding order in effect. Unless the court issues such a temporary restraining order, the interim impounding order of the Postmaster General would terminate (at the latest) on the expiration of ten days. The Postmaster General would be authorized and directed by the bill to issue regulations pursuant to which any person subject to an interim impounding order of the Postmaster General or a temporary restraining order of a district court would be permitted to examine mail addressed to him, under appropriate supervision of authorized representatives of the postal establishment.

While, as will be seen, this proposal does not meet the terms of the 1954 Association resolution in that the Postmaster General would be authorized to issue an impounding order without prior resort to a court, such order would be effective (without confirming action by a court) for no longer than ten days. Even during that period, moreover, the bill would authorize the addressee to examine his incoming mail, and thus to avoid the serious injury that might be caused him if impounding prevented his knowing of important incoming mail unrelated to the charges of obscenity, fraud or lottery against him. In the conferences on the proposed bill representatives of the Section urged that this latter provision be strengthened by giving the addressee a right to withdraw mail unrelated to the charges; but the latest draft went no further than to permit this in the discretion of the Postmaster General. Assuming that this point could be resolved as we urged, it would appear that the essential objective of the Association's 1954 resolution would have been met; the major prospect of unwarranted injury to an addressee would be removed by his right to examine the mail addressed to him and to withdraw such mail as is unrelated to the charges.

Suppression of Gambling Information in Interstate Commerce

At the 1955 Midyear Meeting of the House of Delegates the Section of Criminal Law proposed a resolution supporting pending legislation which would require regulated communications carriers to comply with the orders of law-enforcement agencies to discontinue or refuse the leasing of communications facilities used or intended for use in the transmittal or receiving of gambling information in interstate commerce, and would confer on the carriers immunity for complying with such orders.

It appeared to our Council that this legislation, which would give effect to such

orders of law-enforcement agencies without any court action, raised a question similar to that discussed above with respect to H.R. 569, 83d Cong. With the authority of the Council, the Section Chairman moved in the House of Delegates to amend the statutory provision advocated by the Section of Criminal Law by inclusion therein of the clause underscored in the following text:

> "When any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, or local law enforcement agency, acting within its jurisdiction, *which notice is approved by a court of competent jurisdiction as in ex parte proceedings for the issuance of a search warrant,* that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce, it shall discontinue within a reasonable time, or refuse, the leasing, furnishing or maintaining of such facility, but no damages, penalty or forfeiture, civil or criminal, shall be found against any common carrier for any act done in compliance with any such notice. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a Federal Court or in a State or local tribunal or agency, that such facility should not be discontinued or removed, or should be restored."

The language of the proposed added clause had been worked out with officers of the Section of Criminal Law; but when the Section Chairman moved the amendment in the House his motion was opposed by the Chairman of the Section of Criminal Law. After debate the motion was carried.

I am informed that no action was taken on the proposed legislation in the first session of the 84th Congress.

Repeal of General Exemptions from the Administrative Procedure Act

Pursuant to the general authority conferred on the Section under the 1950 resolution of the House of Delegates to "preserve the gains made by the adoption of the Administrative Procedure Act", the Section has supported S. 490, 84th Cong., introduced by Senator Eastland, which is in the same terms as S. 18, 83d Cong., and S. 1770, 82d Cong. S. 18, 83d Cong., introduced by Senator McCarran, passed the Senate on May 6, 1953. It was referred in the House of Representatives to the Committee on the Judiciary, but no hearings were held on it, and it was not reported out.

Our support of S. 490 was by correspondence with the Chairman of the Senate and House Committees on the Judiciary and by conference. The letters from the Section Chairman to the Chairmen of these Committees of the Congress stated briefly the views of the Association "that all existing general exemptions from the Administrative Procedure Act should be repealed and no further general exemptions enacted, and that, where the existing escape clauses of the Act are thought by an agency to offer an inadequate answer

to its particular problem, the agency should seek exemption from specific provisions of the Act shown to be properly inapplicable in its particular field, rather than general exemption from the entire Act."

No hearings were held on S. 490 during the first session of the 84th Congress. It is, I think, likely that the Senate will act favorably during the second session, since the bill is one that had already passed the Senate in the 83d Congress. Continued activity to urge passage by the House of Representatives will be called for during the coming year.

Opposition to Bills to Repeal the Fulbright Amendment

Acting under the same general authority, the Council voted at its meeting on May 21, 1955, to oppose enactment of S. 211, 84th Cong., introduced by Senator Smith of Maine, and H.R. 156, 84th Cong., introduced by Congressman Nelson of Maine, which would repeal the Fulbright Amendment to the Walsh-Healey Act and thus in effect create a new general exemption from the application of the Administrative Procedure Act. The Section Chairman accordingly submitted to the Senate and House Committees on the Judiciary a memorandum in opposition to these bills based on a report of the Committee on Public Contracts which is set forth in the June issue of the Bulletin (7 Ad. L. Bul. 120-25).

No action was taken on these bills in the first session of the 84th Congress.

Air Coordinating Committee

Last December the Bureau of the Budget communicated to the White House a proposal for a new executive order for the reorganization and functioning of the Air Coordinating Committee, to replace Executive Order No. 9781. Believing that, under the proposal as drafted, there was some risk that rule-making and adjudication subject to the Administrative Procedure Act might be affected by the deliberations of the Air Coordinating Committee, and believing further that suggestions as to the proposal would be ineffective unless promptly made, the Section (acting under the general authority referred to above) wrote to the White House Office and the Bureau of the Budget advocating the inclusion in any such executive order of provisions to the effect that no action or recommendation of the Air Coordinating Committee shall operate to deprive interested persons of due notice or other procedural rights under the Administrative Procedure Act, and that no agency in matters subject to the Administrative Procedure Act shall predicate any rule, decision or action upon a recommendation or action of the Committee except to the extent that due notice thereof is included in the notice of proposed rule-making or in the issues of a case adjudication proceeding.

I am informed that this matter is still under consideration in the Government.

Extension of Time to File Claims with Indian Claims Commission

In consonance with earlier action of the Section to seek an extension of time for the presentation of Indian claims before the Indian Claims Commission, and the endorsement of such extension by Association action in 1951 (76 A.B.A. Rep. 171), the Section this year supported four bills to that end pending in the House of Representatives, H.R. 220, H.R. 238, H.R. 1563, and H.R. 3238. None of these was reported out in the first session of the 84th Congress, and the prospects in this regard are uncertain.

The early background of this matter will be found in the report of the Committee on Contracts of Lawyers with Indian Tribes printed in the third 1951 issue of the Bulletin (3 Ad. L. Bul. 105-7). At that time the Section was concerned with revision of a statement of policies, issued by the Commissioner of the Bureau of Indian Affairs, with regard to the approval of claim contracts between attorneys and Indian tribes. Ultimately the Association, acting through the Section, was instrumental in accomplishing the repudiation by the Secretary of the Interior of that policy statement. Before that event, however, the time for filing claims had expired. Our recent interest is in reopening the time for filing claims so that such Indian tribes as were hindered in securing adequate representation while the policy statement was in effect may act now with such representation.

Jurisdiction of Unfair Labor Practice Cases

At the 1954 Annual Meeting the Section, adopting a resolution proposed by the Committee on Labor to oppose transfer of jurisdiction of unfair labor practice cases from the National Labor Relations Board to the Federal District Courts, authorized the Council to refer this matter to the Section of Labor Relations Law and to reconsider it if that section disagreed.

The Section of Labor Relations Law having concurred, we presented this resolution to the 1955 Midyear Meeting of the House of Delegates, which adopted it. The resolution is set out in the March issue of the Bulletin (7 Ad. L. Bul. 45). The views of the Association were duly reported to the Congress. No action was taken in the first session of the 84th Congress on the proposal to which the Association had so objected.

It should be noted that the proposal in question differs from the proposal of the Hoover Commission and a majority of its Task Force on Legal Services and Procedure that there be established a Labor Section of the Administrative Court proposed by them, with jurisdiction over the adjudication of unfair labor practice cases. One of the principal grounds of objection to transfer of such jurisdiction to the United States District Courts was that such a transfer would impair the desirable uniformity of decision accomplished through centralized adjudication by the Board. The proposed Labor Section of the proposed Administrative Court could preserve that uniformity.

The Proposal for an Administrative Court for Judicial Review (S. 488, 84th Cong.)

At the 1953 Annual Meeting the Section adopted the following resolution:

> "The Section of Administrative Law disapproves the proposal embodied in S.14, 83d Congress, to create an Administrative Court of the United States with jurisdiction to review the action of administrative agencies, subject to certain exceptions. The Section adopts the conclusion, stated in the report submitted to it by its Committee on the Administrative Court Proposal at its 1951 meeting, that the creation of any such specialized court of general jurisdiction for the judicial review of administrative agency action would be undesirable. The Section authorizes its Council to recommend to the House of Delegates at an appropriate time approval of this conclusion and disapproval of S. 14, 83d Congress."

At the same meeting the Section of Judicial Administration adopted a resolution in the same terms. At the 1954 Midyear Meeting the report of the Association's Standing Committee on Jurisprudence and Law Reform, submitted to the House of Delegates, including a section on this subject ending as follows:

> "The members of the Standing Committee on Jurisprudence and Law Reform unanimously share the conclusions and views of the Administrative Law Section in disapproval of and opposition to S. 14 which are set forth in some detail in the aforesaid Administrative Law Bulletin, Vol. 3, No. 3, 1951."

In the 84th Congress Senator Eastland introduced S. 488, which is in the same terms as S. 14, 83d Congress.

Since the 1953 Annual Meeting the Council has on several occasions, the last of which was this year's Midyear Meeting, considered whether the time was appropriate to recommend to the House of Delegates opposition to S. 488 (formerly S. 14). The Council has decided on each occasion that there was no sufficient reason for doing so. No action was taken with respect to S. 488 in the first session of the 84th Congress.

It should be noted that the kind of administrative court proposed by S. 488, for the judicial review of agency action, differs from the Administrative Court proposed by the Hoover Commission Task Force, whose function would be the initial adjudication of some matters now adjudicated by administrative agencies.

Other Matters under Consideration

Other matters with which the Section has been concerned during the current year you will find discussed in the committee reports printed in the July issue of the Bulletin (7 Ad. L. Bul., No. 4). Matters relating to hearing examiners and to uniform rules, including action taken in earlier years by the Section and the Association, you will find discussed in articles on those subjects in the December issue of the Bulletin (7 Ad. L. Bul. 20, 28). These will be among the subjects to be considered by the Section in its discussion of the Hoover Commission and President's Conference reports.

There is a supply of back issues of this year's Bulletin at Association headquarters in Chicago. Any members who have not received all four issues should be able to obtain the missing issues by writing to Miss Helen Duval at headquarters.

Regional Meetings

The Section has put on programs at all recent regional meetings of the Association, which have elicited considerable interest. This is one of the most effective ways in which the work of the Section can be made known to lawyers generally, including non-members of the Association, who are always invited to attend.

The program committee for the meeting at Phoenix last April, under the chairmanship of Charles H. Woods of Tucson, developed a program dealing largely with problems of state administrative law, but including also the first public presentation by Whitney R. Harris of his paper on the Hoover Commission reports which has since appeared in full in the American Bar Association Journal. The program at Cincinnati last June, developed by a committee under the chairmanship of L. Clair Nelson, was designed to assist the general practitioner in the conduct of proceedings before administrative agencies. The tentative plan for regional meetings during the coming year is to put on programs dealing with the procedures of, and practice before, the various Boards of Contract Appeals, similar to the program to be presented at the forthcoming annual meeting of the Section.

The regional meetings scheduled for the coming year are: Northwestern Regional Meeting, St. Paul, Minnesota, October 12-15, 1955; Deep South Regional Meeting, New Orleans, Louisiana, November 27-30, 1955; Northeastern Regional Meeting, Hartford, Connecticut, April 15-18, 1956. These will offer an opportunity for active participation by Section members in the various regions, of which I hope they will take advantage.

Section Organization and Finances

The report of the Committee on Organization and By-Laws printed in the July issue of the Bulletin sets forth (7 Ad. L. Bul. 245-6) resolutions, proposed by the Committee and adopted by the Council for submission to this meeting of the Section, which would amend the By-laws to provide for twelve members-at-large of the Council to be elected for three-year terms, instead of eight members-at-large elected for four-year terms. The purpose of these amendments is to broaden participation in the direction of Section affairs and thus to stimulate the active interest of members in the work of the Section. If, as I hope, these resolutions are adopted at the first session of the Section meeting they will be submitted forthwith to the House of Delegates, so that if approval is forthcoming the election of Council members on Wednesday morning, August 24, can be held under the amended By-laws.

It is impossible to report at this writing the precise number of Section members, since at this time of the year there is necessarily a lag in keeping up to date the membership records at Association head-

quarters. It appears, however, that despite the losses in membership that occur during every year, we have accomplished a substantial net gain, and that our total membership is well over 1,175.

The present year has been encouraging with respect to Section finances. The most important innovation in this regard was the initiation of a plan of voluntary contributions, in an amount equal to the Section dues of $5, to the work of the Section. Though that plan was initiated only in March, there had been received by the end of the fiscal year on June 30 voluntary contributions aggregating $1,395. I am glad to report also that for the next fiscal year the Board of Governors has increased the appropriation by the Association to the Section to $1,600 (from the $500 appropriated during the last fiscal year). With these two sources of funds, and with the economies effected this year in the cost of publishing the Administrative Law Bulletin, the Section should be able to increase the effectiveness of its activity, in part by meeting a greater portion of the expenses of committee operation. The Council has already authorized appropriations for such purposes.

I am grateful for the diligent and effective activity of the many members of the Section who have participated in its work during my term as Chairman. What can be accomplished in any such term depends primarily on the contributions of the other officers of the Section, of the members of its Council, and of the members and officers of its many committees, including especially the Chairman of the National Committee. From all of these I have received constant and effective help. I extend to them my own thanks and the thanks of the Section. For whatever I may have accomplished myself I am indebted primarily to my predecessor for the constant goad of his example.

Respectfully submitted,

ROBERT M. BENJAMIN
Chairman

REPORT OF THE NATIONAL COMMITTEE ON PENDING LEGISLATION AND ASSIGNMENTS

The following list identifies some 50 Bills now pending in the 84th Congress which are of current interest to the Section of Administrative Law. The legislative status and the Section assignment are given for each Bill and where applicable the Section or legislative history. Companion or related Bills are grouped according to subject matter indicated by the center headings which under Part B correspond with the Section Committees. In Part A are listed those Bills which would amend the Administrative Procedure Act. The Bills grouped in Parts A and B are serialized in Part C.

During the past year about 160 of the 11,914 measures introduced were selected for Section distribution, 98 of which were formally assigned to 15 Committees.

Those remaining of interest to the Section as reflected in Committee reports or Section proceedings are listed below. The present Committee assignment of each Bill is as shown expressly in Part A and by reference to the center heading in Part B.

None of the 390 public bills enacted into law were either sponsored or opposed by this Section.

The Section was involved in one open engagement and three skirmishes on the field of legislation considered by the First Session of the 84th Congress. Testimony was given on behalf of the Association before the Senate Committee on Appropriations on the subject of Agency Fees and Charges, par. 12, *infra* p. 29. Several conferences were held with Committees of Congress on proposals for mail impounding legislation, par. 11, *infra* p. 29. Section Officers presented to the House Committee on Interior and Insular Affairs the views of the Association sponsoring an extension of time for the filing of Indian Claims, par. 9, *infra* p. 28. The Senate and House Judiciary Committees were informed of the Section's opposition to repeal of the Fulbright Amendment, par. 1(d), *infra* pp. 24-25. Representations were made to Committees of Congress on other matters, e.g., the Association's continued support for repeal of exemptions to the Administrative Procedure Act, par. 1(c), *infra* p. 24.

A. Bills to Amend the Administrative Procedure Act

(1) Hoover Commission Bills:

H.R. 6114	Mr. Thompson
H.R. 7422	Mrs. Church
S. 2504	Mr. Wiley
S. 2541	Mr. McCarthy

To improve legal procedures in the Executive Branch of the Government through the enactment of an Administrative Code, and for other purposes.

Status: The above listed Hoover Commission Bills are pending in the Judiciary Committees of the Senate and House respectively.

Assignments: Various sections of these Bills are assigned to the several Committees of the Section corresponding to their different functions and interests. (These four Bills on the Administrative Code and the Bills on the Legal Services Act are under study by the Sellers' Committee—a Special Committee of the Association on Legal Services and Procedure.)

Comment: These Bills follow the Task Force and Hoover Commission Reports of March, 1955, on Legal Service and Procedure. H.R. 6114 is presumably identical with the draft Administrative Code as published in Part V of the Task Force Report, except for one added Section 209 which would extend the Code to Loyalty and Security proceedings. No such provision is contained in the Task Force Code. The other Bills, H.R. 7422, S. 2504 and S. 2541 are intended to reflect those provisions approved by the Hoover Commission as contrasted with its Task Force with one exception, i.e., the Hoover Commission, it is believed, did not affirmatively approve

Section 206 of the Code relating to agency decisions (superseding Section 8 of the Administrative Procedure Act). Each of the above Bills would enact an Administrative Code which would displace the Administrative Procedure Act. (The above list does not include the pending Legal Services Act Bills also prompted by the Hoover Commission and Task Force Reports, i.e., H.R. 6115, Mr. Thompson; H.R. 7420 and H.R. 7421, Mrs. Church; H.R. 6172, Mr. Vinson; S. 2540 and S. 2527, Mr. McCarthy; and S. 2502 and S. 2503, Mr. Wiley.)

(2) Trial Examiner Bills:

H.R. 29 Mr. Hyde
S. 1018 Mr. Payne

To amend Section 11 of the Administrative Procedure Act.

H.R. 4558 Mr. Celler
S. 2044 Mr. Kefauver

Same as above.

Status: These Bills are pending before the Judiciary Committees of the Senate and House respectively with the exception of Senator Payne's Bill, S. 1018, which is before the Senate Committee on Government Operations.

Assignment: Committee on Hearing Examiners.

Comment: The Hyde and Payne Bills would create an Office of Administrative Procedure, etc. The Celler and Kefauver Bills would leave the functions in the CSC under a new Bureau, etc., contrary to the Association's position. See 7 Ad. L. Bul. 225, and 79 ABA Rep. 500.

(3) Exemptions:

S. 490 Mr. Eastland

To amend the Administrative Procedure Act, and eliminate certain exemptions therefrom.

Status: This Bill is pending before the Senate Judiciary Committee. A Report is expected during the next session of Congress.

Assignment: The National Committee. See 7 Ad. L. Bul. 221.

Comment: S. 490 is the successor to S. 18 of the 83rd Congress and S. 1770 of the 82nd Congress. This legislation is sponsored by the Association. S. 18 passed the Senate May 6, 1953, S. Report No. 111, 83rd Cong. It was not acted upon by the House Judiciary Committee. See 76 ABA Rep. 131.

(4) Fulbright Amendment:

S. 211 Mrs. Smith
H.R. 156 Mr. Nelson

To repeal the Fulbright Amendment of 1952 to Section 10 of the Walsh-Healey Act.

Status: Pending before the Senate and House Judiciary Committees respectively.

Assignment: Committee on Public Contracts and Committee on Labor. A complete statement on these Bills

is contained in a special report of the Committee on Public Contracts, 7 Ad. L. Bul. 120.

Comment: The Section has advised both Committees of Congress of the Association's opposition to these Bills, the effect of which is to exempt certain Walsh-Healey Act determinations from the Administrative Procedure Act and opportunity for judicial review. See 75 ABA Rep. 446.

(5) Indian Claims Commission:

H.R. 5566 Mr. Haley

To terminate the existence of the Indian Claims Commission, and for other purposes.

Status: Passed the House July 30, 1955, H. Rep. No. 1483, and is or will be referred to the Senate Committee on Interior and Insular Affairs (see related Bill S. 1746, *infra*).

Assignment: Being assigned to the Section's newly established Committee on Indian Claims.

Comment: The text of the Section's opposition to H.R. 5566 which would exempt the Commission's Hearing Examiners (and probably its hearings) from the Administrative Procedure Act, appears at 8 Ad. L. Bul., p. 8. Neither H.R. 5566 or S. 1746 provides for an additional period within which claims may be filed as urged by the Association. See 76 ABA Rep. 171.

(6) Miscellaneous Subjects:

H.R. 563 Mr. Multer

To amend Section 10(d) of the Administrative Procedure Act so as to broaden judicial relief under that Section pending review of Administrative action.

Status: Pending before House Judiciary Committee.

Assignment: Committee on Judicial Review.

H.R. 7617 Mr. Multer

To amend the Administrative Procedure Act, Sections 5, 7 and 10.

Status: Pending before House Judiciary Committee.

Assignment: Committee on Administrative Procedure Act.

Comment: The Bill would extend the hearing provision of the Administrative Procedure Act to agency determinations involving the exercise of judgment or discretion.

B. Bills Pending Before Particular Section Committees

1. Administrative Practitioners Committee

H.R. 778 Mr. Keating

To provide that each member of the Bar of the highest court of a State or a Federal Court shall be eligible to practice before all administrative agencies.

Status: Pending before House Judiciary Committee.

H.R. 1601 Mr. Reed
H.R. 2416 Mr. Lipscomb
S. 2436 Mr. Carlson

To authorize the Secretary of the Treasury to prescribe regulations relating to qualifications of persons who assist taxpayers in termination of Federal tax liabilities.

Status: Pending before House Ways and Means Committee and before Senate Finance Committee.

Comment: The above Bills are successors to H.R. 9922 of the 83rd Congress and are opposed by the Association, 79 ABA Rep. 139.

H.R. 7070 Mr. Rodino

To require any attorney-at-law practicing before a Federal Court, or appearing before a Congressional Committee as counsel for a witness testifying before such committee, or appearing as counsel before any department or agency in the Executive Branch of the Government of the United States, to file a non-Communist affidavit.

Status: Pending before House Judiciary Committee.

2. Administrative Procedure Act Committee

H.R. 7617 See paragraph A(6), supra

S. 172 Mr. Bible

To establish a Board of Claims within the Atomic Energy Commission to hear and determine claims for injury to or loss of livestock as a result of any nuclear or thermo-nuclear explosion caused by any agency of the United States; etc.

Status: Pending before Atomic Energy Committee.

H.R. 489 Mr. Eastland

To provide general rules of practice and procedure before Federal agencies.

Status: Pending before Senate Judiciary Committee.

Comment: This Bill is a successor to S. 17 of the 83rd Congress which passed the Senate August 11, 1954, S. Rep. No. 1953. See 7 Ad. L. Bul. 128.

3. Agriculture Committee

S. 930 Mr. Mundt

To provide an adequate, balanced and orderly flow of milk and dairy products in interstate and foreign commerce; to stabilize prices of milk and dairy products; to impose a stabilization fee on the marketing of milk and butterfat.

Status: Pending before Senate Committee on Agriculture and Forestry.

Comment: See Committee Report 7 Ad. L. Bul. 188. Action of the Section on this subject appears at 8 Ad. L. Bul., p. 10. It is anticipated that S. 930 will be replaced by a revised bill which will be introduced in the Second Session of this Congress.

4. Aviation Committee

S. 308 Mr. Bricker

S. 1119 Mr. Magnuson

To amend the Civil Aeronautics Act of 1938.

Status: Pending before the Senate Committee on Interstate and Foreign Commerce

Comment: These Bills would replace the 1938 Act, et al., with somewhat revised and consolidated statute.

S. 1649 Mr. Magnuson

To amend the Civil Aeronautics Act of 1938, as amended, so as to authorize the imposition of civil penalties in certain cases.

Status: Pending before Interstate and Foreign Commerce Committee.

Comment: See Section action in opposition, 8 Ad. L. Bul., pp. 9-10.

5. Communications Committee

S. 1549 Mr. Magnuson
H.R. 5613 Mr. Priest

To amend the Communications Act of 1934 so as to authorize the imposition of administrative fines by the FCC for violations of its rules and regulations, etc.

Status: Pending before Senate and House Committees on Interstate and Foreign Commerce. Hearings were held on S. 1549 before the Senate Subcommittee. No report of that Committee is expected. See 7 Ad. L. Bul. 220; and Section action in opposition, 8 Ad. L. Bul., pp. 9-10.

Comment: See Section action in opposition to the above Bills, 8 Ad. L. Bul., pp. 9-10.

S. 1648 Mr. Magnuson
H.R. 5614 Mr. Priest

To amend Section 309 of the Communications Act of 1934 in regard to protests of grants of instruments of authorization without a hearing.

Status: H.R. 5614 passed House July 21, 1955, H. Rep. No. 1051, and was reported with amendments in Senate July 28, 1955, S. Rep. No. 1231. Pending on the Senate calendar.

Comment: See Committee Report 7 Ad. L. Bul. 193, 219 and substitute resolution presented before Section meeting, 8 Ad. L. Bul., p. 10.

6. Food and Drugs Committee

H.R. 4099 Mr. Priest
H.R. 4100 Mr. O'Hara
H.R. 5927 Mr. Miller

To protect the public by amending the Federal Food, Drug, and Cosmetic Act to prohibit the use of new chemical additives which have not been adequately tested to establish their safety.

Status: Pending before House Committee on Interstate and Foreign Commerce.

Comment: See Report of Committee on Agriculture, Food, Drugs and Related Subjects, 7 Ad. L. Bul. 188.

7. Immigration and Nationality Committee

S. 519 Mr. Ives and others
S. 1206 Mr. Lehman and others
S. 1315 Mr. Humphrey

To make certain changes in the Immigration and Nationality Act.

Status: Pending before Senate Judiciary Committee. Hearing scheduled to begin November 21, 1955.

Comment: See Committee Report on the above Bills, 7 Ad. L. Bul. 235 and Section action adopting four resolutions pertaining to this legislation, 8 Ad. L. Bul., p. 7.

H.R. 4430 Mr. Celler

To enact general revisions to the Immigration and Nationality laws.

Status: Pending before House Judiciary Committee.

8. Indian Claims Committee

H.R. 220 Mr. Wickersham
H.R. 238 Mr. Albert
H.R. 1563 Mr. Edmondson
H.R. 3238 Mr. Wickersham

To extend the time within which Indian Claims may be filed.

Status: Before House Committee on Interior and Insular Affairs.

Comments: See 76 ABA Rep. 171 (1951); 3 Ad. L. Bul. 105; for recent Section action see 8 Ad. L. Bul., p. 8.

H.R. 5566 See paragraph A(5), supra
S. 1746 Mr. Murray

To terminate the existence of the Indian Claims Commission and for other purposes.

Status: S. 1746 passed Senate July 20, 1955, S. Rep. No. 849; pending before House Committee on Interior and Insular Affairs.

H. Res. 343 Mr. Metcalf

To authorize an investigation of the Indian Claims Commission.

Status: House Rules Committee.

9. Judicial Review Committee

H.R. 563 See paragraph A(6), supra.
H.R. 5986 Mr. Metcalf

Provides that any person aggrieved by final decision of the Employees' Compensation Appeals Board may bring action on his claim in a United States District Court.

Status: Pending before House Committee on Education and Labor.

H.R. 6682 Mr. Celler
S. 2223 Mr. Kilgore

To authorize the abbreviation of the record on review or enforcement of orders of Administrative Agencies by the Courts of Appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of orders.

Status: Pending before the House and Senate Judiciary Committees respectively.

10. Postal Matters Committee

S. 8 Mr. Carlson

To authorize the Postmaster General to apply through judicial pro-

cedures for impounding of mail in certain cases.

Status: Pending before Senate Post Office and Civil Service Committee.

Comment: This Bill is substantially in agreement with the Association's resolution adopted in 1954 in opposition to H.R. 569 of the 83rd Congress, 7 Ad. L. Bul. 33.

H.R. 174 Mr. Rees

To authorize the Postmaster General to impound mail in certain cases.

Status: Pending before House Committee on Post Office and Civil Service.

Comment: H.R. 174 is the successor to H.R. 569 of the 83rd Congress, opposed by the Association, 79 ABA Rep. 120.

S. 2516 Mr. Kefauver and others

To authorize the Postmaster General to hold and detain mail for temporary period in certain cases.

Status: Pending before Senate Committee on Post Office and Civil Service.

Comment: The Section adopted a resolution in opposition to this Bill in the absence of certain amendments, 8 Ad. L. Bul., pp. 8-9.

11. Agency Fees and Charges

S. Res. 140 Mr. Magnuson and Mr. Bricker

Provides for a study by the Senate Committee on Government Operations of the establishment of fees and charges by Government agencies for work or other things of value performed by them.

Status: Pending on Senate calendar with adoption recommended by the Committees on Interstate and Foreign Commerce and Government Operations, S. Rep. No. 1184.

Comment: The Association's resolution urges repeal of Part V of the Independent Office Appropriations Act of 1952, 7 Ad. L. Bul. 115. S. Res. 140 would authorize a further Congressional investigation of this subject which could lead to action in keeping with the Association's position. The resolution, if adopted, requests agencies not to establish new fees and charges for the period ending January 31, 1957 in order to maintain status quo pending investigation by the Senate Committee.

C. Cross Reference

For convenience in finding the Bills grouped in Parts A and B above, they are serialized and cross-indexed to the subject matter paragraphs.

House Bills	*Para.*	*Senate Bills*	*Para.*
H.R. 29	A(2)	S. 8	10
156	A(4)	172	2
174	10	211	A(4)
220	8	308	4
238	8	489	2
563	A(6)	490	A(3)

House Bills	*Para.*	*Senate Bills*	*Para.*
778	1	519	7
1563	8	930	3
1601	1	1018	A(2)
2416	1	1119	4
3238	8	1206	7
4099	6	1315	7
4100	6	1549	5
4430	7	1648	5
4558	A(2)	1649	4
5566	A(5)	1746	8
5613	5	2044	A(2)
5614	5	2223	9
5927	6	2436	1
5986	9	2504	A(1)
6114	A(1)	2516	10
6682	9	2541	A(1)
7070	1	S. Res.140	11
7422	A(1)		
7617	A(6)		
H. Res. 343	8		

Respectfully submitted,

DONALD C. BEELAR,
Chairman (1)

BERNARD R. KENNEDY,
Vice-Chairman

CARLILE BOLTON-SMITH,
Vice Chairman (2)

NOTE:

(1) Succeeded to Chairmanship vacated by L. Clair Nelson, December, 1954, to whom the Committee desires to acknowledge its appreciation for his service in organizing the National Committee.

(2) Carlile Bolton-Smith rendered invaluable assistance to the Committee but abstained from all policy decisions and comments on particular legislation.

The Committee desires to express its thanks to Frank J. Nivert for assistance furnished in the selection of bills involving administrative procedure.

EXCERPTS FROM MINUTES OF THE CONFERENCE OF SECTION CHAIRMEN

At the Conference of Section Chairmen held at the American Bar Center October 23, 1955, there was considerable discussion concerning the problems of the sections. The following excerpt from the minutes of that meeting are set forth because they contain matters for the guidance of Section officers and members and Section Committees, not carried in the Section Handbook:

"Administrative problems of sections

In discussing this subject, the Secretary brought up the following matters:

(a) *Coordination of recommendations*

Many section chairmen have had the experience of having the House of Delegates defer action on the section's recommendation until the views of another section or a committee dealing with the same subject matter can be obtained. It will save time and effort, and lead to prompt action on recommendations, if other interested groups are consulted in advance, so that their views are known. Occasionally when several groups are known to be working on many phases of a problem, a committee is appointed to coordinate their views. The recently appointed Special Committee on Legal Services and Procedure is an example; the committee, consisting of representatives of several Association groups studying the Hoover Commission recom-

mendations, will report to the House at the 1956 Midyear Meeting, after considering the opinions of the several committees and sections concerned with this matter.

In this connection the Secretary reminded the chairmen of the requirements of Article IX, Section 9 of the By-Laws, which states that 'Whenever a section is considering any subject in the field of state legislation, it shall notify and consult with the National Conference of Commissioners on Uniform State Laws.' A similar provision exists in the by-laws of the National Conference: when legislation is being considered in that body in which ABA sections or committees are interested, the Conference Committee is directed to consult with the ABA group concerned.

(b) *Approval of recommendations and representation of the Association*

Article XII of the By-Laws reads as follows:

> 'No section or committee or member thereof shall assume to represent the Association or any section or committee thereof before any legislative body, in any court or before any other tribunal, unless authorized so to do by the House of Delegates or by the Board of Governors. Whenever representation requires the filing of any brief, other than a brief filed with a legislative committee, a substantial copy of the proposed brief shall be submitted to and approved by the Board of Governors or such of its members as the Board may designate to act for it.
>
> 'No report, recommendation or other action of any section or committee thereof, or of any committee of the Association shall be considered as the action of the Association unless and until it shall have been approved or authorized by the House of Delegates or by the Board of Governors. Any printed material containing any report, recommendation or proposal circulated by any section or committee thereof or by any committee of the Association shall have clearly indicated thereon that the same does not represent the view or action of the Association, unless the House of Delegates or the Board of Governors shall have taken approving action with respect thereto.'

The Board of Governors and the House of Delegates have from time to time adopted directives to implement this by-law. Sometimes when two or more groups request authority to act in presenting the position of the Association, confusion or conflicting views result. In this situation the House has directed that

> 'Whenever a resolution offered by any section or committee of the Association, which is approved, authorizes the appearance of representatives of the Association by two or more sections or committees before a court or legislative or administrative body, the President of the Association be authorized to designate a representative or representatives of the Association for such purpose.'

The House has further directed that

> 'When a member of a section or committee of the Association is appearing before a public body to express the official viewpoint of the Association, he shall:
>
> (a) be accompanied by the chairman of the section or committee or by a representative designated by him and

(b) limit himself to the expression of the authorized official view of the Association, and shall not be at liberty to present personal or other views, whether or not consistent with the authorized view of the Association.'

This led to a discussion among the chairmen as to how far the representative of a section or committee can go, when requested by a congressional committee or other governmental agency to give background for Association action or to state his personal opinion. Some of the chairmen said that they adhere strictly to the letter of the Association's directive, responding to the question by saying that, as a representative of the Association, they are authorized to report only the Association's action. It was agreed that this is a matter for discretion and good judgment; and that in no case should there be any ground for doubt, when responding to request for such additional information, that this is a personal statement and does not express Association action.

The Secretary urged each chairman to be certain that his committee chairmen are informed of the provision cited above, and understand the reasons for the requirements.

While the directive forbids general circulation or release of reports that have not been approved by the House of Delegates, it is obvious that section committee reports must be made available to section members in advance of action, and that section and committee reports are prepared in advance of action by the House of Delegates. Indeed, the Public Relations Department welcomes advance information on matters to be considered by sections and in the House of Delegates. Because the general public does not distinguish between a report which has been approved by the House and therefore represents the view of the Association, and one which has not received such approval, the House has adopted a directive that

> 'Every printed or mimeographed report for distribution which contains a resolution or recommendation shall have prominently displayed on the cover or in the heading the following statement:
>
> "Nothing herein contained shall be construed as the action of the American Bar Association unless the same shall have been first approved by the House of Delegates or the Board of Directors."'"

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